

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
CHRISTCHURCH**

**I TE KŌTI TAKE MAHI O AOTEAROA
ŌTAUHAHI**

**[2024] NZEmpC 42
EMPC 15/2024**

IN THE MATTER OF	an application for leave to extend time to file a challenge to a determination of the Employment Relations Authority
BETWEEN	TALLEY'S GROUP MANAGEMENT LIMITED Applicant
AND	LIANA HENDRY Respondent

Hearing:	On the papers
Appearances:	G P Malone, counsel for applicant M O'Flaherty, counsel for respondent
Judgment:	11 March 2024

JUDGMENT OF JUDGE K G SMITH

[1] Talley's Group Management Ltd has applied for leave to extend the time within which it can challenge a determination of the Employment Relations Authority.¹

[2] The delay was one day,² caused because of a miscalculation by Talley's counsel, Mr Malone, as to the last date on which a challenge could be filed as of right.

¹ *Hendry v Talley's Group Management Ltd* [2023] NZERA 720 (Member van Keulen).

² I have accepted that this is the correct calculation of the length of the delay, taking into account regs 74A and 74B of the Employment Court Regulations 2000 and s 55 of the Legislation Act 2019.

[3] Initially the application was opposed which resulted in timetabled directions for an exchange of submissions. After the applicant's submissions were filed Ms Hendry advised, through counsel, that the application was no longer opposed.

The application

[4] The Authority's determination was issued on 4 December 2023. Ms Hendry was successful in two personal grievance claims against the company, that she had been unjustifiably disadvantaged and unjustifiably dismissed. That success led to an award in her favour of compensation under ss 123(1)(c)(i), and lost remuneration under 123(1)(b) and 128 of the Employment Relations Act 2000.

[5] Mr Malone's evidence was that Talley's Group Management Ltd instructed him on or about 20 December 2023 to file a challenge to the Authority's determination.

[6] Mr Malone acknowledged being aware of the time within which a challenge could be filed as of right, but wrongly had fixed in his mind that steps should have been taken by Monday 22 January 2024, rather than the actual date which was 15 January 2024. He could not explain how that miscalculation occurred except to accept it was just a mistake on his part.

[7] On 16 January 2024, the present application for leave to extend time to file the challenge was filed, supported by Mr Malone's affidavit and a draft statement of claim.

Analysis

[8] The Court has jurisdiction to extend the time for a challenge to be filed.³ There are established principles applied to assist the Court in exercising that discretion, but the overarching consideration is what the interests of justice require.⁴

[9] Talley's Group Management Ltd took steps to challenge the determination within time but did not do so because of counsel's error. When that error was discovered Talley's acted promptly to rectify the situation. The Supreme Court has

³ Employment Relations Act 2000, s 219.

⁴ *Almond v Read* [2017] NZSC 80, [2017] 1 NZLR 801 at [38].

held that an extension of time should generally be granted without examining the merits of the case in these circumstances.⁵

Outcome

[10] I am satisfied an extension of time should be granted and order accordingly. Talley's Group Management Ltd is to file the statement of claim which accompanied the application within seven days of the date of this decision.

[11] Costs are reserved.

K G Smith
Judge

Judgment signed at 4.45 pm on 11 March 2024

⁵ At [37].